JD–34-04
Chicago, IL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CARPENTERS LOCAL 1027, MILL-CABINET-INDUSTRIAL DIVISION AFFILIATE OF CHICAGO AND NORTHEAST ILLINOIS DISTRICT COUNCIL OF CARPENTERS,
Respondent

and Case 13–CB–17571–1

CONN-SELMER, INC., MUSSER DIVISION,
Charging Party

HyeYoung Bang-Thompson, Esq.,
for the General Counsel.
Larry G. Hall, Esq., (Matkov, Salzman, Madoff & Gunn), of Chicago, IL,
for the Respondent.
Terrance B. McGann, Esq., (Whitfield & McGann), of Chicago, IL,
for the Union.

DECISION

Statement of the Case

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Chicago, Illinois on March 10, 2004. The complaint alleges that Respondent violated Section 8(b)(3) of the Act by refusing to execute a written contract embodying an agreement reached between it and the Charging Party. In its answer, Respondent admitted that an agreement was reached, but not the version advanced by the Charging Party and the General Counsel. It thus denied that it committed an unfair labor practice. After the trial concluded, the parties filed briefs, which I have read and considered.

Based on the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following:

Findings of Fact

I. Jurisdiction

The Charging Party, a Delaware corporation, with headquarters in Elkhart, Indiana and an office and place of business in LaGrange, Illinois, the facility involved in this case, manufactures musical instruments. Respondent admits that Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that Respondent itself is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Facts

The Charging Party has had a long-term bargaining relationship with the Respondent covering all production, maintenance and warehouse employees, including lead men, at the Charging Party's LaGrange facility (also known as the Musser facility). It is conceded that the unit described above, which covers about 44 employees, is an appropriate unit within the meaning of the Act. The parties have entered into successive collective bargaining agreements, the last of which (before the events in this case) was effective from November 19, 1999 to November 18, 2002.

The parties undertook negotiations for a new contract in late 2002. The parties met several times in early 2003, but apparently remained far apart on an agreement. On January 20, 2003, the employees went out on strike, but the negotiations continued and a federal mediator joined the talks.

On April 16, 2003, the parties met for about 4 or 5 hours at the office of the Federal Mediation and Conciliation Service in Hinsdale, Illinois. Present at this session were: Tom Summers, the federal mediator; Human Resources Director Michelle Cornelis-Hammer, Attorney Larry Hall, Vice-President of Operations Robert Palmer and Plant Manager Harry Isom for Charging Party; and James Kasmer, assistant to the president of Respondent District Council, Business Agent Bob Wengel, and several employee members of the bargaining committee for the Respondent.

In their negotiating sessions, the parties worked from the expired agreement. Thus, the Charging Party's written proposals included a provision that the expired agreement would continue unchanged, except for specified items. The Respondent's counterproposals worked from the same premise. Relevant to the dispute that later arose between the parties are the following provisions of the expired agreement. In Article VIII, subsection 8.2, certain job classifications were listed and appropriate full-performance level wage rates were set forth for each of the 3 years of the contract. For example, Group A tool and diemaker positions were to be paid $14.60 per hour, as of November 19, 1999; $15.15, as of November 19, 2000; and $15.71, as of November

19, 2001. Subsection 8.5 of that Article provided certain minimum starting rates for the listed classifications, which, obviously, were much lower than the full-performance level rates set forth in subsection 8.2. In point of fact, however, many of the Charging Party's 44 employees—26, according to one witness (Tr. 114)—were paid above the full-performance rates of pay listed in subsection 8.2. This was permitted under subsection 8.6 of the contract, which provides that the specified rates "in no way prohibit the employer from paying above the established rates." Also of relevance is subsection 8.3, which states, "the amount of any negotiated wage increase during the term of this Agreement shall then be added to the wage rates then paid to employees."

After an initial exchange of written proposals on April 16, it appeared that the parties remained far apart. For example, the Charging Party offered a two year agreement with a wage increase for "each individual employee" of 2.25% in 2003 and 2.00% in 2004, effective on the first Monday after ratification; the Respondent countered with a three year agreement, including increases of 37 cents and 40 cents, with a "wage & classification review & reopener" in the third year. After receipt of the Respondent's counterproposal, the representatives of the Charging Party were ready to break off negotiations, but remained after a sidebar meeting between Ms. Hammer, Mr. Kasmer and the mediator. The Charging Party then recast its written proposal by adding the following provision (item 2): "The current (11-19-01) wage rate assigned to each labor grade (A-K) shall be increased by five cents ($.05)" and rephrasing its earlier wage increase proposal to read as follows (item 3): "After application of the five cent adder to each labor grade, wages of each individual employee . . . will be increased by" the same 2.25% and 2.00% increases in its earlier proposal. The proposal also included language (item 16) indicating that the adder and the wage increase (items 2 and 3) would be retroactive to November 19, 2002, provided there was a unanimous recommendation that the proposal be accepted by the Respondent and its bargaining committee (GCX 6).

The Charging Party's proposal was presented in a joint meeting of the bargaining committees for each party. Ms. Hammer read the wage proposal in its entirety. After she read the first part of it, dealing with the five cent adder, Attorney Hall, who had authored the language in the proposal, interrupted and picked up his copy of the expired contract and pointed to subsection 8.2 of Article VIII. He looked directly at Kasmer and said, "the nickel is going to get added to the rates on the 11/19/01 column . . . 15.71 is going to go to 15.76." He panned the room to show all of Respondent's bargaining team the figures to which he was referring. No one from Respondent's bargaining team asked any questions or made any comments about the wage proposal that was read to them.

Thereafter, in apparent acceptance of the wage proposal, Respondent's negotiators asked for holiday pay for Good Friday, which was coming up that week, and for a signing bonus of $1000 per employee. They also asked for a vacation payout option. The Charging Party rejected the proposal for Good Friday pay and the signing bonus, but it did accept Respondent's request for a vacation payout option. A new written proposal (GCX 7) was prepared adding the above agreements to the prior proposal and it was presented at another joint meeting. Respondent indicated its assent to Charging Party's written proposal, except that it wanted a schedule for

returning strikers, and a provision that employees not immediately recalled the following Monday, April 21, could file for unemployment benefits, which Charging Party would not contest. The Charging Party agreed. The parties also agreed that the strike would end and the contract would go into effect upon ratification by the employees; the ratification vote was to take place on Friday, April 18. Attorney Hall reminded Respondent's representatives about the provision with respect to retroactivity if the bargaining committee gave unanimous consent. The meeting of April 16 ended when Respondent indicated its approval. There were handshakes all around and someone from Respondent's side stated that it would be good to be getting back to work.[1]

On April 18, the employees ratified the April 16 agreement. The employees ended their strike and returned to work pursuant to the agreement. The Charging Party applied the agreement of April 16—including the wage and benefits enhancements—and sought to obtain the Respondent's signature to its version of the April 16 agreement. Respondent, for its part, submitted its version of the April 16 agreement. On May 8, 2003, the Respondent submitted a grievance to the Charging Party, alleging that the Charging Party was violating the recently negotiated agreement by not applying the 5 cent adder to the wage classifications in subsection 8.2 of the contract. On June 13, 2003, the Respondent filed another grievance, alleging that the Charging Party violated the contract by "not paying the 2 ¼ increase to each employee when they move[d] to a different job classification." The Charging Party denied those grievances and they have not been processed any further in the grievance-arbitration procedure set forth in the collective bargaining agreement.

By the summer of 2003, the parties' different views of the April 16 agreement had hardened, although both parties agreed at the hearing that General Counsel's Exhibit 8, with appropriate attachments, constituted the agreement of the parties on April 16. The Charging Party took the position that the 5 cent adder applied to wage classification rates and the percentage increases applied to the wages of individual employees. The Respondent apparently thinks that both the 5 cent adder and the percentage increases apply to both the wage classification rates and the individual wages of each employee. The Respondent filed a charge with the Board based on its view of the agreement of April 16, but the charge was dismissed. A complaint issued basically adopting the Charging Party's view of the agreement. The full collective bargaining agreement reflecting this view is set forth as General Counsel's Exhibit 19. A copy of that agreement, with appropriate attachments, including the April 16 agreement, was tendered to the Respondent on October 16, 2003. Respondent has refused to execute that agreement (Tr. 80-85).[2]

---

[1] The above is based primarily on the credible and mutually corroborative testimony of Attorney Hall and Ms. Hammer. Respondent's representative Kasmer also testified and essentially confirmed the accounts of Hall and Hammer. To the extent that the accounts differ in any way, I credit the accounts of Hall and Hammer because they were clearer and more detailed than Kasmer's account.

[2] The Respondent agrees that, if a violation is established, it is required to sign General Counsel's Exhibit 19, with appropriate attachments (Tr. 84-85).

B. Discussion and Analysis

Parties to a collective bargaining agreement violate their bargaining obligation under the Act by failing to execute a memorialized version of the agreement upon request. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). The obligation arises only if it has been found that there has been a "meeting of the minds" on all material terms of an agreement. That finding is based on objective rather than subjective considerations. If the terms of a contract are ambiguous there can be no meeting of the minds, but only if the ambiguities are those for which neither party can be blamed or both are equally to blame. *Hempstead Park Nursing Home,* 341 NLRB No. 41 (February 27, 2004) (Slip op. 2-3). It is not sufficient for the parties simply to sign a memorandum of understanding; the parties are obligated to sign a full collective bargaining agreement that fairly incorporates the agreed upon terms. *Miron & Sons Laundry*, 338 NLRB No. 2 (Slip op. p. 8) (2002). Nor do disagreements over interpretation provide a defense to a refusal to sign a contract that fairly reflects agreed upon terms. *Teamsters Local 617 (Christian Salvesen)*, 308 NLRB 601, 603 (1992).

Applying those principles, I find that the agreement of April 16, as reflected in General Counsel's Exhibit 8, with appropriate attachments, was the agreement of the parties. The record evidence supports that finding. Indeed, both parties concede that this is the agreement of the parties. There was thus an objective meeting of the minds on that agreement. At most there is a disagreement as to the meaning of items 2 and 3 of that agreement, dealing with wage increases. I also find that General Counsel's Exhibit 19, the full collective bargaining agreement tendered by the Charging Party on October 16, 2003, fairly reflects the agreement of April 16. The Respondent was thus obligated to execute General Counsel's Exhibit 19.

The Respondent's only viable argument is that items 2 and 3 of the April 16 agreement were ambiguous. On this record, I cannot find that they were. The plain words of the April 16 agreement comport with the Charging Party's view as reflected in the collective bargaining agreement tendered for signature on October 16, 2003: The five cent adder was to be placed on all the wage classification rates and thereafter all individual employees were to receive the specified percent wage increases. This makes sense because it accounts for the fact that over half of the employees were making more than the wage classification rate, which was a significant factor in the Charging Party's modified wage proposal during negotiations, according to the testimony of Attorney Hall. The Respondent's contrary view makes no sense. If the wage classification rates were to be effected by both the 5 cent adder and the percentage increase, why would they have been written as separate items, the 5 cent adder submitted as a sweetener that provided a breakthrough to seemingly deadlocked negotiations? And how would Respondent's view accommodate the fact that most employees made more than the wage classification rates? In its view, both items 2 and 3 were to be applied to the established wage rates, thus negating any need to have separate provisions as plainly set forth in the April 16 agreement. Respondent also contends that its view is supported by reference to subsection 8.3 of Article VIII of the agreement, which remained unchanged during the 2003 negotiations. That subsection provides that any negotiated increases be added to the "wage rates" of employees. But the language of subsection 8.3 applies only to negotiated increases "during the term of

this Agreement." Here, the parties were negotiating a new agreement after the old one had expired. There is no basis for reading subsection 8.3 to change the common sense meaning of items 2 and 3 of the April 16 agreement of the parties. Nor does is bear upon those items of the agreement. No one even raised the issue in negotiations. In these circumstances, I find that the language of the April 16 agreement, fairly reflected in the agreement tendered for signature by the Charging Party, is clear and unambiguous.

In short, there is no ambiguity in the terms of the April 16 agreement and the agreement tendered by the Charging Party on October 16 fairly reflects that agreement. Any misunderstandings in this case were attributable not to any cognizable ambiguity, but to Respondent's subjective view of the agreement, creating, at best, a disagreement over interpretation of terms. Thus, Respondent violated Section 8(b)(3) of the Act by refusing to sign the agreement tendered to it on October 16, 2003. As indicated above, at footnote 2, the Respondent agrees that, if a violation is found, it is required to sign General Counsel's Exhibit 19, with appropriate attachments.

Conclusion of Law

By refusing to sign General Counsel's Exhibit 19, the October 16, 2003, collective bargaining agreement, with appropriate attachments, which fairly memorializes the April 16 agreement of the parties, the Respondent violated Section 8(b)(3) of the Act.

Remedy

Having found that Respondent Union has violated the Act by refusing to sign the agreement reached by it and the Charging Party, I shall recommend that it cease and desist from refusing to sign the agreement tendered to it on October 16, 2003, and that it be ordered to sign that agreement.

On these findings of fact and conclusion of law, and on the entire record, I issue the following recommended[3]

ORDER

The Respondent Union, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

   (a) Refusing to execute the collective bargaining agreement tendered to it on October 16, 2003, by Charging Party, which memorializes the

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

agreement of April 16, 2003, of the parties, namely, General Counsel's Exhibit 19.

(b) In any like or related manner, interfering with the rights guaranteed to employees by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, execute the collective bargaining agreement tendered to it on October 16, 2003, which is set forth in General Counsel's Exhibit 19.

(b) Within 14 days after service by the Region, post at its offices, places of business and meeting places, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including places where notices to employees and members are customarily posted. Reasonable steps shall be taken by it to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Charging Party, if willing, at all locations where notices to its employees are custormarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps it has taken to comply.

Dated, Washington, D.C. April 19, 2004

_____
Robert A. Giannasi
Administrative Law Judge

[4] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to execute the collective bargaining agreement tendered to us by Conn-Selmer, Inc., Musser Division, on October 16, 2003, that memorializes our agreement of April 16, 2003.

WE WILL NOT, in any like or related manner, interfere with the rights guaranteed to employees by Section 7 of the Act.

WE WILL, upon request, execute the collective bargaining agreement tendered to us by Conn-Semler, Inc., Musser Division, on October 16, 2003, that memorializes our agreement of April 16, 2003.

CARPENTERS LOCAL 1027, MILL-CABINET-INDUSTRIAL DIVISION AFFILIATE OF CHICAGO AND NORTHEAST ILLINOIS DISTRICT COUNCIL OF CARPENTERS

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

200 West Adams Street, Suite 800, Chicago, IL 60606-5208

(312) 353-7570, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
It MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS **NOTICE MAY BE DIRECTED TO THE COMPLIANCE OFFICER, (312) 353-7170.**